

## Exhibit 3



politics

Audio

Log In

# Prosecutors mistakenly turn over potentially FBI classified material to Proud Boys on trial

By [Holmes Lybrand](#) and Casey Gannon, CNN

Updated 0018 GMT (0818 HKT) March 10, 2023



**(CNN)** — Federal prosecutors accidentally turned over documents that could have included classified information to members of the far-right Proud Boys who are [on trial for seditious conspiracy](#), including more than 1,000 internal messages between FBI agents.

On Thursday, Judge Timothy Kelly gave the FBI more time to review the messages that were shared with defense attorneys to determine whether any are classified. The judge also instructed the attorneys for the five Proud Boys on trial not to review the messages further and to not share them with others.

The messages were mistakenly included in material provided to the defense teams and "may involve spill of classified information," according to Jocelyn Ballantine, an assistant US attorney involved in managing the criminal case.

The issue came to light during the cross examination of FBI agent Nicole Miller on Wednesday, when attorney Nicholas Smith, who is representing Proud Boys member Ethan Nordean, revealed messages between FBI agents -- including Miller -- discussing the investigation into the group and their actions related to [January 6, 2021](#).

The five members on trial for seditious conspiracy for their alleged roles in the US Capitol attack have pleaded not guilty.

Miller said that after receiving a large excel spreadsheet of messages from the FBI, she filtered out messages unrelated to the case or ones she did not send. She said she submitted her filtered messages to the government, which were then turned over to defense teams as part of routine evidence sharing.



Audio

Miller added that the messages are "on the secret side of our system" at the FBI but could not say whether specific messages were classified.

"What the witness told us is that she filtered messages only sent from her," Ballantine said. "That means that no one has reviewed the messages sent from anyone else on the spreadsheet" to determine whether they contain classified information.

## FBI messages

One of the messages revealed in court discussed communications between one of the Proud Boys now on trial and his attorney at the time, according to Smith. It's unclear how the FBI had access to the communications and whether the communications are protected by attorney-client privilege.

"This one definitely indicates they want to go to trial," FBI agent T. Wang wrote, referring to the attorney-client correspondence.

Other messages discussed different aspects of the Proud Boys' case, according to a court filing by Smith, which included screenshots of some of the messages.

Several messages discussed whether FBI agents had enough evidence to charge members of the Proud Boys with conspiracy, asking if messages they got from Proud Boy leader Enrique Tarrio were enough to get "over the hurdle of the conspiracy charge."

"So long (as) we can actually go after them with conspiracy and not make a fool of ourselves," one message reads, according to the filing.

Other messages discussed taking the name of an agent, who was present for a meeting with an informant, out of a report as well as an FBI "boss" telling an agent to destroy "338 items of evidence." Ballantine said the discussion of destroying items was unrelated to the Proud Boys case.

Defense attorneys have been allowed to hold onto the messages while the FBI reviews them, though prosecutors have suggested that they want to submit new spreadsheets with classified information removed and will ask that defense counsel delete the original documents.



Log In

Audio